SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000513-001 DT 01/14/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

RANCHO TEMPE MHP LLC

ABBY LYN EWING

v.

BENJAMIN BARKLEY (001)
DEPARTMENT OF BUILDING AND FIRE SAFETY (001)

BENJAMIN BARKLEY
4605 S PRIEST DR LOT 99
TEMPE AZ 85282
TERRIE ZENOFF

OFFICE OF ADMINISTRATIVE HEARINGS
BENJAMIN BARKLEY
4605 S PRIEST DRIVE, #291
TEMPE AZ 85282

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

> The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.[1] The reviewing court may not substitute its own discretion for

[1] Sundown Imports, Inc. v. Ariz. Dept. of Transp., 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

that exercised by the agency,[2] nor may it act as the trier of fact,[3] but must only determine if there is any competent evidence to sustain the decision.[4] This court may not function as "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.[5]

Only where the administrative decision is unsupported by competent evidence may the trial court set it aside as being arbitrary and capricious.[6] In determining whether an administrative agency has abused its discretion, we review the record to determine whether there has been "unreasoning action, without consideration and in disregard for facts and circumstances; where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached."[7]

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the administrative hearing, exhibits made of record and the memoranda submitted. Here, Plaintiffs, Rancho Tempe MHP LLC, Mary and Jack Fears, Jackie and Roy SiFuentes, et al, seek review of Arizona's Department of Building and Fire Safety's administrative order.

In the case at hand, Defendant (real party in interest), Benjamin Barkley, filed a Petition for Hearing with the Department of Building and Fire Safety, alleging that co-Plaintiff, Roy SiFuentes, manager of the mobile home park, attempted to stop an open tenants' meeting, a violation of Arizona's Mobile Home and Parks Residential Landlord Act (hereinafter "the Act").[8] At the hearing, the Administrative Law Judge (hereinafter "ALJ") found that Plaintiffs did violate the Act and recommended that Plaintiffs pay damages to each mobile home owner residing in the park, the amount equal to one month's rent (approximately $90,000.00). Plaintiff's now bring the matter before this court.

The first issue is whether an ALJ has the authority to award damages to each and every homeowner residing in the park in the amount equal to one month's rent. A.R.S. §41-2198.02 states:

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[2] *Ariz. Dept.of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).
[3] *Siler v. Arizona Dept. of Real Estate*,193 Ariz. 374, 972 P.2d 1010 (App. 1998).
[4] *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz.App. 432, 484 P.2d 201 (1971).
[5] *DeGroot v. Arizona Racing Com'n*,141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App. 1984).
[6] *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).
[7] *Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 94, 495 P.2d 861, 864 (1972), as cited by *Petras v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981).
[8] A.R.S. §33-1452(G): "The landlord shall not prohibit meetings of tenants with or without invited visiting speakers in the mobile home park relating to mobile home living and affairs in the park community or recreational hall if such meetings are held at reasonable hours and when the facility is not otherwise in use."

> The administrative law judge may order any party to abide by the statute or contract provision at issue and may levy a civil penalty on the basis of each violation. **All monies collected** pursuant to this article **shall be deposited in the state general fund to be used to offset the cost of administering the administrative law judge function**. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by § 41-2198.01. [emphasis added]

It is exceedingly clear that the ALJ has the authority to levy civil penalties. It is equally unambiguous that these monies are to be collected and deposited in the state general fund to be used as an offset of ALJ administration costs. The ALJ should have ordered Plaintiffs to pay the nearly $90,000.00 into the state general fund as directed by the statute. Not only does the statute not authorize the awarding of damages to injured parties, it states that all monies go to the state general fund. Arizona courts must give effect to statutory language in accordance with its commonly accepted meaning unless the statute provides a definition or it appears from context that a special meaning was intended.[9] Not even the cleverest of lexicologists or etymologists could infer that this statute's language authorizes the awarding of damages to injured parties.

The final issue is one of the sufficiency of the evidence to support the ALJ's factual determination. Plaintiffs argue that the ALJ abused her discretion by awarding approximately $90,000.00 in damages, where: 1) evidence allegedly shows that Mr. SiFuentes was not the park "landlord," therefore not being subject to the Act; and 2) where evidence allegedly shows that Plaintiffs had no prior violations of the Act, and that Mr. SiFuentes did not prohibit the tenants from the meeting. All of these questions are arguments concerning facts decided against the Plaintiffs by the ALJ.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[10] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[11] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[12]

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[9] *Tobel v. State, Arizona Dept. of Public Safety*, 939 P.2d 801 (App. 1997); also see *Bianco v. Patterson,* 159 Ariz. 472, 768 P.2d 204 (App.1989)(Words contained in statutes are to be given their ordinary meaning unless the context in which they are used suggests another meaning).

[10] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey,* 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission,* 94 Ariz. 113, 382 P.2d 226 (1963).

[11] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[12] *Guerra*, supra; *State v. Girdler,* 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[13] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[14] The Arizona Supreme Court has explained in *State v. Tison*[15] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[16]

I find substantial competent evidence in the record to support the ALJ's findings of fact and conclusions of law. This court reverses the administrative agency's decision to award damages to the tenants of the mobile home park, for it was clearly erroneous and contrary to Arizona law. The Department of Building and Fire Safety must instead collect these monies and deposit them into the state general fund.

IT IS ORDERED affirming the decision of the Department of Building and Fire Safety, and modifying that decision as described in this opinion.

IT IS FURTHER ORDERED that the Department of Building and Fire Safety shall order that Plaintiffs deposit an amount equal to one month's rent from all residents of the mobile home park into the state general fund.

IT IS FURTHER ORDERED that counsel for the Defendant Department of Building and Fire Saftey shall prepare and lodge a judgment consistent with this minute entry opinion no later than February 20, 2004.

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[13] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).
[14] *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[15] SUPRA.
[16] *Tison*, at 553, 633 P.2d at 362.